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Oklahoma Workers' Compensation Commission
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Attorney General Agrees, Workers' Compensation Commissioners' Deliberations Require Confidentiality

Attorney General Scott Pruitt today released an opinion affirming an inherent constitutional right of the Workers' Compensation Commissioners to engage in confidential pre-decisional oral and written deliberations when operating in their quasi-judicial role.

Citing a recent Oklahoma Supreme Court Ruling in *Vandelay Entertainment, LLC v. Fallin* in which the Court recognized the Governor's right to privileged communications, the AG opined, "the Governor's right to receive such advice and consultation is essential to the existence, dignity and function of the Governor as chief executive and lies within the Governor's inherent power. The principle of separation of powers expressly declared in Article 4 Section 1, protects this privilege from encroachment by legislative acts, such as the Open Records Act."

From the Opinion, "... the principle that the 'powers properly belonging to a branch of government' are those 'which are essential to the existence, dignity, and function of the branch' is a principle that applies with equal force to all three branches of government."

The AG held that, "Frank, candid and confidential deliberations among the Workers' Compensation Commissioners are essential to the Commissioners' performance of their quasi-judicial function, and accordingly, their deliberations are protected by the deliberative process privilege by virtue of the Oklahoma Constitution's separation of powers provision."

For appellate communications to be exempt from the Open Records and Open Meeting Acts, the AG's Opinion specified they must be pre-decisional and deliberative. The Worker's Compensation Commission (WCC), created by statute in February 2014, has been operating without private deliberations of appeals.

The Workers' Compensation Commission is an executive branch body, with three commissioners who sit "en banc" to hear various workers' compensation related appeals or reviews. The opinion was issued in response to a request by WCC Chairman Bob Gilliland, which was approved by Commissioners LeRoy Young and Mark Liotta.

Bob Burke, an Oklahoma City attorney who frequently plays a self-appointed watchdog role on Oklahoma's workers' compensation system said, "This opinion is good news. It is only common sense that the Commission needs to deliberate in private in order to carry out its mission."

The opinion was signed by Attorney General Scott Pruitt and Assistant Attorney General Neal Leader.

"The Commission appreciates the Attorney General's well-reasoned opinion," said Gilliland.

"Confidentiality safeguards the Commissioner's decision making process from being affected by outside influences. The privacy interests of both the Commissioners and parties are protected."

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